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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/779,457	02/13/2004	Martin Kammler	YOR920030623US1 (8728-671)	8968
46069	7590	03/17/2006	EXAMINER NOVACEK, CHRISTY L	
F. CHAU & ASSOCIATES, LLC 130 WOODBURY ROAD WOODBURY, NY 11797			ART UNIT 2822	PAPER NUMBER

DATE MAILED: 03/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/779,457	Applicant(s) KAMMLER ET AL.	
	Examiner Christy L. Novacek	Art Unit 2822	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 March 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
 13. ☐ Other: _____.

Advisory Action

This office action is in response to the proposed amendment filed March 1, 2006.

Response to Proposed Amendment

The proposed amendment to the claims has been entered and made of record. The amendment overcomes the objections to claims 6 and 23 stated in the previous office action. Therefore, those objections are withdrawn.

Response to Arguments

Applicant's arguments filed March 1, 2006 have been fully considered but they are not persuasive.

Regarding the rejection of claim 1 as being unpatentable over Xie in view of Kato and Gerlach, Applicant argues that Xie allegedly fails to disclose forming a nucleation site including at least one surface or subsurface defect at a predetermined area of the substrate by implantation with ions. Xie discloses implanting a substrate so as to form defects in predetermined areas of the substrate and then epitaxially grows quantum dots on the dislocations. Xie states, "The [quantum] dots grow as islands preferentially nucleating on the intersections between perpendicular dislocation lines (where the lattice constant is smallest)." (col. 3, ln. 7-9). Thus, Xie meets these claim limitations.

Also regarding the rejection of claim 1 as being unpatentable over Xie in view of Kato and Gerlach, Applicant argues that there is allegedly no motivation to combine the Kato and Xie references. As stated in the previous office action, Kato discloses implanting ions into a substrate at predetermined areas to form locations at which quantum dots are to be grown. Kato teaches that using a focused ion beam device to implant the ions provides the benefits of

Art Unit: 2822

maskless implantation and makes the fabrication process much easier because the quantum dots are drawn, patterned or formed directly by ion implantation. In addition, no etching process is required, so quantum dots can be fabricated precisely (Abstract). At the time of the invention, it would have been obvious to one of ordinary skill in the art to implants the ions of Xie using the focused ion beam device disclosed by Kato because Xie does not disclose any particular implantation method and Kato teaches that it is advantageous to form quantum dots using a focused ion beam device because it allows for maskless implantation.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christy L. Novacek whose telephone number is (571) 272-1839. The examiner can normally be reached on Monday-Thursday and alternate Fridays 7:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zandra Smith can be reached on (571) 272-2429. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CLN
March 14, 2006


Zandra V. Smith
Supervisory Patent Examiner

15 March 2006